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Plaintiff in Self-Represent

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

YAXIAN FAN

Case No.: 8:22-CV-02178-FWS-(DFMx)

Plaintiff. vs.

**IN OPPOSITION TO MOTION TO
DISMISS SAC. PURSUANT CITIZEN'S
IMMUNITY, FOR CIVIL RIGHT FOR
FAIR TRIAL AND CHILDREN SAFETY,
WITH DUE PROCESS 14TH AMENDMET**

CITY OF NEWPORT BEACH

Defendant. vs.

Hearing Date: January 25, 2024

KEITH E. RODERHUIS, 2nd Defendant

Time: 10.00 AM

Owner of KER Legal Group

Judge: Honorable, Fred W. Slaughter

Courtroom: 10D

**TO THE HONORABLE JUDGE SLAUGHTER FOR THE UNITED STATES
TO THE FEDERAL COURT AND DEFENDANTS**

Plaintiff has pleaded sufficient facts to state pursuant for civil right to have fair trial and children's safety that to prevent no anyone injury again, to determine with citizen's immunity protection in due process of law under fourteenth amendment.

Moreover, respectfully submits in opposition to motion dismiss SAC. See docket #33-34 Also, refer Plaintiff filed Second Amendment Compliant on October 31, 2023, docket # 31

I, Defendants destroyed Noerr doctrine protection, due to they illegally conduct engaged in conspiracy, violation in due process, to corrupt OCSC filing legal system.

1 Defendants all for one purpose, to deprive Plaintiff's civil right for fair trial.
 2 Plaintiff all legal actions, that for one purpose, to fight back for fair trial, that was
 3 deprived twice by Defendants, both parties all focus on Civil right for fair trial.

4 Therefore, in this lawsuit, it is due process of law under 14th Amendment Apply!

5 Fourteenth Amendment SECTION 1: Nor State shall make or enforce any law
 6 which shall abridge the privileges or Immunities of Citizens of the United States;
 7 Nor shall any State deprive any person of life, liberty, or property, without due
 8 process of law; nor deny to any person within jurisdiction equal protection of laws.

9 Fourteenth Amendment's first section includes several clauses: Citizenship Clause,
 10 Privileges Immunities Clause, Due Process Clause, and Equal Protection Clause.
 11 Plaintiff is qualifying for all clauses in this lawsuit, but deprived all by Defendants.

12 "Due Process" refers to fair procedures of law is protecting Plaintiff's Citizen Civil
 13 Right for fair trial, which deprived by KER with someone from the city, (demand name
 14 and position) who has power above the laws, engaged in conspiracy, in violation due
 15 process, to corrupt OCSC filing and legal systems.

16 On November 21, 2023, Defendants filed motion to dismiss SAC, see dkt 33, p.8:12
 17 KER finally admitted: *"that Defendants allowed the Oange County Superior Court's*
 18 *Courtroom clerk to hold onto Plaintiff's documents, recovered costs against Plaintiff as*
 19 *the prevailing party in that suit, and filed and later withdrew a sanctions motion*
 20 *against Plaintiff. Specifically, Plaintiff asserts numerous allegations against the City—*
 21 *All of which, if accepted as true, are protected under the Noerr-Pennington doctrine"*

22 Analysis "Defendants allowed" that means: KER with Someone (demand name and
 23 position) from the City of Newport Beach engaged in conspiracy, together to control
 24 OCSC Courtroom (not clerk) was Supervisor Stacy D. Secours, given to him Plaintiff's
 25 name, case number, motion date and time, thereafter, he twice holds onto Plaintiff's
 26 opposition summary judgement documents, it was filed on 11/18/2020 and 11/24/2020.
 27
 28

1 Because Defendants engage in conspiracy, able to control OCSC Courtroom's filing
 2 system, can able to above the law of Equal Right in Due Processing, can decide which
 3 party allow or disallow for fair proceeding and Court Trial. Therefore, Plaintiff's
 4 opposition summary judgement documents cannot scan to Docket, Judges (include
 5 Appellant Judges) cannot read and cannot see all evidence in support. which to
 6 deprived Plaintiff's Civil Right for the fair trial and Children's safety.

7 Its same as play basketball, Defendants told the referee to kick out Plaintiff twice as
 8 an opposition, only allowed KER play all the way with only his opinion, that was unfair
 9 and untrue totally. Also, KER extremely shameful to claim many times by emails and
 10 letter KER is prevailing party without opposition. KER has been malicious threatening to
 11 extortion and garnish Deposition Cost that disallowable cost by CCCP. 1033.5(b)(2).

12 On 3/2/2023, OCSC assigned Judge Salter's final ruling: *"The defendant claimed \$3,776*
 13 *in deposition cost, the burden of proof rests with the moving party to show the costs are*
 14 *not statutorily authorized or unnecessary of not unreasonable under facts."*

15 Recently, KER changes to harassing cost, Can you show the bill payable to and details,
 16 let Federal Court and victim check if verifiable. See exhibit 1; 7; docket 31.

17 After verbally granted summary judgement by Judge George, as temporary only once in
 18 five minutes on 12/3/2020, I still following the court scheduled by assigned Judge,
 19 meanwhile, focused on prepared Trial Brief Documents and Exhibits with in three holes
 20 blinder and turned in courtroom C22 for fair trial on March 29, 2021.

21 It was shocked Judge George signed proposed judgement (was drafted by KER, only
 22 on his opinion) over 90 days, from 12/3/2020 to 3/3/2021, did not notice Plaintiff
 23 should file an Appeal. That was against California Rules of Court 3.159: (i) *"if a*
 24 *written judgement is required, the court must sign and file the judgement within 50 days*
 25 *after the announcement or service of the tentative decision.*
 26
 27
 28

1 A Judge should notify the parties of the subject matter of the communication and
2 allow the parties an opportunity to respond, if requested, but Judge George did not.

3 A Judge should perform those duties with respect, impartially, courteous, and
4 diligently for assigned Judge scheduled court trial, but Judge George did not.

5 Even the Judge has immunity, but should be faithful to, and maintain professional
6 competence in the law, and follow the Court Rules, but Judge George did not.

7 From two judges in this lawsuit to confused Plaintiff who should to following?
8 Now, I understand, that was part of corruption which conducted by Defendants to
9 informed the Judge Geroqe, as temporary, only once in the case, to granted summary
10 judgement in five minutes. For such abusive the Court Power, to violation in Equal
11 Right for fair trial, to corrupt OCSC legal system. The judiciary is independent of the
12 authorities, let us allow the due process of the legal investigation to take its course.

13 Consequently, Defendants against constitution fundamentally for: **“No person**
14 **shall be deprived of life, liberty of property without fair procedures in due process**
15 **of law.”** It is why any of lawsuit if with evidence in support, all Courts cannot be
16 ignoring, and all lawsuits it must adjudicate legal disputes between parties.

17 All of all evidence to proof “Granted Summary Judgement” by the Judge Geroqe, as
18 temporary only once in five minutes in OCSC that was completed baseless, it is must
19 invalid immediately, due to Defendants conducted corruption in OCSC legal system.
20

21 In the theory, due process is protecting Citizen Civil Right, if deprivation by someone
22 from government with attorneys engaged in constancy, corrupt OCSC fair processual,
23 that has as significant portions of a state legislature’s substantive jurisdiction can be
24 restricted by its Due Process of law under Fourteenth Amendment application.

25 **All fact to proof, Plaintiff protects by due process of law under 14th Amendment,**
26 **constitution principle of fundamental fairness for Citizen’s Civil Right Immunity!**
27 42. U.S.C. 1983 is protecting Citizen Civil Right, if deprivation by the Government
28

Police in force actions, which is part of fourteenth amendment, but not apply in this case. Plaintiff is demanding the Bench trial which scheduled in Federal Court on May 28, 2024.

Citation: (recognizing applicability of the doctrine to abuse of process and other claims); *Baltimore Scrap Corp. v. David J. Joseph Co.*, 81 F. Supp. 2d 602

II. Noerr doctrine Sham Exception cannot shield KER's evil motive to purpose of harm, tort, extortion, anonymous, perjuries, deceived judgement. Defendants destroyed of Noerr-Pennington Doctrine Protection totally, due to engaged in conspary, corrupt OCSC filing and legal system, violation in due process of law and twice deprived Plaintiff's civil right for fair trial.

What is the Sham Exception to the Noerr-Pennington Doctrine?

The Noerr-Pennington immunity is a limited exemption from antitrust liability for certain actions by individuals or groups that are intending with that action to influence government decision-making, which can be legislative, executive, or judicial.

As you might expect with any exception, parties that want to get away with antitrust liability try to fit their conduct within it.

That is one reason why **the Supreme Court makes it clear that exceptions, exemptions, and immunities to the antitrust laws should be construed narrowly.** For better understanding, it refers The Ninth Circuit has identified "three circumstances in which the sham litigation exception applies," including: **(1) "where the lawsuit is objectively baseless and the defendant's motive in bringing it was unlawful"**

Response (1): Initially, Defendants let courtroom Supervisor Stacy D, Secours twice to hold onto Plaintiff's opposition summary judgement documents, not scan to docket. After that, it is easy let Judge Stephanie George, as temporary only once in five minutes to granted summary judgement straightway. She was intentionally to against fair due proceeding without having Plaintiff opportunity to be heard and show all evidence in support in this lawsuit, it was disallowed and deprived Plaintiff's civil right for fair trial

1 and children's safety. All evidence to proof Defendants unlawful conducted in violation
 2 due process of law and against constitution of Fourteenth Amendment. As It is Granted
 3 Summary Judgement was baseless, due to without opposition. Sham Exception Apply!

4 **(2)** *"where the conduct involves a series of lawsuits 'brought pursuant to a policy of*
 5 *starting legal proceedings without regard to the merits' and for an unlawful purpose"*

6 **Response (2).** Since the lawsuit started until to present, no any of Judge or judgement
 7 common on Merit, Only KER outright lied number of times. Please see evidence to
 8 proof from his emailed on 4/14/2023, docket #31, exhibit 8.:

9 *"The Appellate Court Judges thought your claim was entirely without merit."*

10 Plaintiff request for name of Judges, but no any answer. Plaintiff cannot find such
 11 common from Appellant Court's Opinion and any of documents from Appellant Court,
 12 Plaintiff request that responding since, May 23, 2023. docket 22. After half year passed
 13 by; still have no responding. Plaintiff is pursuant for fair trial, protect children's safety,
 14 to prevent anyone injury again, **based on all evidence in strong support MERIT.**

15 Defendants realize all truthful representation which is Plaintiff is unbeatable if to have
 16 court trial, it was why Defendants in unlawful purpose to against constitution as
 17 lawyers but fraud upon in beginning. No Judge common on Merit, only KER outright
 18 lies. Undeniable evidence in support strong merit, KER Sham Exception Applies!

20 **(3)** *"if the allegedly unlawful conduct consists of making intentional*
 21 *misrepresentations to the court, litigation can be deemed a sham if 'a party's knowing*
 22 *fraud upon, the court deprive the litigation of its legitimacy.'"* *Sosa*, 437 F.3d at 938
 23 (quoting *Kottle v. NW. Kidney Ctrs.*, 146 F.3d 1056, 1060 (9th Cir. 1998))

24 **Response (3)** KER knowing his fraud upon initially, he engaged in conspiracy with
 25 someone from the City , let OCSC Supervisor to hold onto Plaintiff opposition
 26 summary judgement document, same as let referee to kike out opposition, without
 27 competition, only KER's opinions running all the way to deprived Plaintiff's fair trial.
 28

1 Plaintiff is determined Civil right to have court trial that is going conduct justify fairly,
 2 and with procedural regularity by an impartial judge and his team in which the Plaintiff
 3 is afforded her rights under the U.S. Constitution fourteenth Amendment.

4 **Both parties focus on Plaintiff's civil right for fair trial deprived by Defendants.**
 5 Defendants able engaged in conspiracy to corrupt OCSC legal filing system, twice to
 6 deprived Plaintiff for fair trial, but not in Federal Court, not even once, it is zero.

7 KER was perjury on Judge's conclusion its must timely filed without oral argument
 8 and deceived to untimely filed in Appellant Court, but cannot in Federal Court.

9 KER able let Judge, granted summary judgement without opposition documents and
 10 no oral argument, under penalty of perjury on notice of ruling: "*that have fully*
 11 *argument, as well as the evidence presented.*" "How can in five minutes to do so? Also,
 12 let judge as temporary, signed granted summary judgement after 90 days, according
 13 court rule 3.159, within 50 days. For the such abusive Judges' power to against court
 14 rules to deprive Plaintiff's fair trial, the judiciary is independent of the authorities, let us
 15 allow the due process of the legal investigation to take its course.

16 As self-defense, Plaintiff is a victim, for all efforts and courts legal actions, only for
 17 one purpose, to pursuant fair trial, is important matter of due process 14th Amendment.

18 KER fraud upon lawsuit initially and in most recently, KER filed docket #33.
 19 On 11/21/2023, KER continue under Federal court are making Eight false statements.
 20 In opposition Plaintiff, has citizen's duty, must let Federal court knowledge that KER
 21 has been fitting in well with the Ninth Circuit has identified three circumstances in
 22 which the sham exception litigation applies. If this Lawsuit has no merit, "What do you
 23 afraid of both of defendants engaged in conspiracy, as both are legal professional
 24 knowing fraud upon, to allowed or disallow to corrupt OCSC flinging legal system, to
 25 conducted litigation can be deemed a sham exception apply! It this crime for such
 26 horribly, deformation, anonymities, harassing, extortion, deceived judgement, under
 27
 28

1 penalty of perjuries, without courts dispute legal issue between parties, without
 2 opposition and twice deprived by Defendants, to deprive Plaintiff's civil right for the
 3 litigation of its legitimacy. All above, KER's Sham Exception Applies.

4 Aso, KER charged his legal fee \$9,500 split 50/50 to both parties. It was seemed he
 5 was in business to collect monetary in the middle, that was conflict of interest. I was so
 6 confused: "was that a legal?" "What kind of law is allowed to?" For such greedy
 7 mentality, can have no moral standard, just evil motive in and easy to corrupt our
 8 country, spend hundreds of years build up great legal system, which fundamentally
 9 Equal Right for fair trial that is making outstanding in the World.

10 "Who should KER to represent too, even I have no any of agreement for his service?"
 11 That time, also, I felt it was not fair to the City paid him for his misrepresented the City.

12 For example, in *California Motor Transport v. Trucking Unlimited*,^[3] the United
 13 States Supreme Court held that the *Noerr-Pennington* doctrine did *not* apply where
 14 defendants had sought to intervene in licensing proceedings for competitors, because
 15 the intervention was not based on a good-faith effort to enforce the law, but was solely
 16 for the purpose of harassing those competitors and driving up their costs of doing
 17 business. The *sine qua non* of a "sham" proceeding is not the purpose to harm a
 18 competitor, but rather the absence of any purpose to obtain government action. Thus,
 19 initiating an administrative proceeding that one hopes to win to harm one's competitors
 20 is within the ambit of the *Noerr-Pennington* doctrine, while initiating a similar
 21 proceeding that one does not meaningfully intend to win solely to delay one's business
 22 competitors is within the sham exception.

23
 24 **Defendants claimed protection under Noerr-Pennington doctrine does not apply.**

25 **It is why granted summary judgement was baseless due to without opposition.**

26 **KER's evil motive repeatedly conduct all, there shameful sham exception Applies.**

27 **There is no any of doctrine can shielded such evil motive to abusive in due Process**
 28

1 *the sand thereby (allegedly) injuring her left arm and side,*” KER twist the truth, which
 2 is not left side, its broken bone on left heel first and left forearm after. In that suddenly
 3 moment, fortunately, I used left forearm to hold on sand ground, which the strength
 4 from shoulder in support, that to avoid up body, face, chest, head to impact on sand
 5 ground. We can imagine, how powerful to broken heel and left forearm fixed inside six-
 6 screw to joint together and heel broken is stay in permanent, due to I scared surgery
 7 again. It is why let the City paint ‘KEEP OFF’ waring again is the must!

8 Why KER cannot mention all caused this injury due to no warning sign for in under
 9 compact sand submerge with high tidal, claylike same as concrete surround subject?”
 10 Especially, have two declarations from the City’s to proof submerge with high tides,
 11 how slippery and fall on solid same as concrete without warnings, same as porthole.5:

12 **KER filed False Statement to Federal Court–FIVE: dkt #33, pg 8:17-19; pg. 9:1**

13 *“Plaintiff is now presenting this SAC in an attempt to delay paying costs owed the City*
 14 *related to the Superior Court lawsuit and for the improper purpose of harassing the*
 15 *City of Newport Beach and its counsel for diligently defending the state claims against*
 16 *the City and being the prevailing party.”* KER is extreme shameful to claim he is
 17 prevailing party, due to let referee to kick out opposition, only KER running all the
 18 way, without competition, thereafter, KER he is truly worse than hit run driver. After
 19 caused Plaintiff injured without warning in underground water, he turned around claim
 20 victims to pay the deposition cost which is disallowable cost by CCCP 1033.5(b)(2).

21 KER malicious threaten to \ extortion and garnish victim bank account. This time, he
 22 twists to harassing cost as “diligently defending as prevailing party.” “What is harasses
 23 cost? “Who did you payable to?” “what’s description and breakdown? “Is this
 24 verifiable.” **KER is not prevailing party legally**, he deceived judgement from timely
 25 to untimely and Appellant court adopted his perjury to dismiss appeal was untimely.
 26 This is evidence to proof KER threaten and extortion in Federal Court, sham exception
 27
 28

1 of law, no any of immunity can protect Defendants to deprive Plaintiff's Civil
 2 Right. Recently, KER continue viciously threaten Plaintiff in proceeding on the
 3 Federal Court. Citation 1. Amdt14.S1.8.13.1 Overview of Fundamental Right.

4 **III. Undeniable All Evidence to proof KER misrepresent to Federal Court**
 5 **repeatedly making false Statements, the purpose is continued to deprive Plaintiff's**
 6 **civil right for fair trial and children's safety. See KER recent filing docket #33 on**
 7 **11/21/2023. 1: KER files false Statement to Federal Court: ONE: dkt #33, p.8: 6-9.**

8 *"Plaintiff's OCSC case was dismissed by way of a motion for summary judgement*
 9 *which the Court of Appeal, Fourth District affirmed. Plaintiff's petition for review was*
 10 *also denied by the California Supreme Court. Plaintiff's claim has already been fully*
 11 *adjudicated."* Undeniable evidence in support KER has been lies in all the times.

12 Absolutely, that not been adjudicated, due to defendants corrupt OCSC filing legal
 13 system, to hold onto opposition summary judgement.

14 Therefore, the Granted Summary Judgment was baseless, due to only based the City's
 15 opinion, without competition. See from Appellant Courts's opinion on page 2.

16 *"The City filed a motion for summary judgement, the motion is not in the record. Nor is*
 17 *Fan's opposition to the summary judgement record motion, if any."*

18 *"In addition, Fan's allegation she opposed the summary judgement which are new*
 19 *evidence submitted after the ruling on the summary judgment, which we cannot*
 20 *consider in reviewing the ruling."* see from Appellant Court's Opinion, page five.

21 Appellant Court cannot review in OCSC' Granted Summary Judgement due to there
 22 was no records and new evidence after granted summary judgement on 12/3/2020.

23 Obsoletely, Supreme Court in San Francisco have no written opinion and no reviewing,
 24 due to too busy with hundreds of cases a day. Also, Defendant has no any of responding
 25 since Plaintiff filed "Petition of rehearing." In Appellant Court on September 6, 2022.

26 The Supreme Court suggested I should file with new evidence to Federal Court.

1 **Plaintiff has been many times to correct with evidences to proof for there was not**
 2 **been fully, and cannot adjudicated in the lawsuit. Even Appellant Courts cannot**
 3 **review due to no opposition summary judgement record. Because Defendants**
 4 **engaged in conspiracy and violation hold onto opposition Summary Judgement**
 5 **documents. But KER constant under penalty of perjury in Federal Court.**

6 **2: KER files false Statement to Federal Court: TWO: SAC docket #31, Exhibit 6.**

7 See KER recently email On April 13, 2023: SAC docket #31, exhibit 6

8 *"The appellate court judges thought your claim was entirely without merit."* "What is
 9 name of Judges told you (KER) or told someone from the City about their thought?"

10 "Why I cannot find such common from Appellant Court's opinion?"

11 Only KER's Evil motive outright lied about Appellant Court Judges mentioned Merit
 12 number of times. In fact, from my knowledge, have no Judges and no Judgments
 13 common on MERIT, because in this lawsuit, have undeniable evidence in support, no
 14 Judge can ignore when have evidence in support, except Judge Stephine George, she is
 15 part of Defendants corruption OCSC team. KER repletely outright lies in Federal Court.

16 **3: KER files false Statement to Federal Court: THREE: docket #33, page 7, line 23**

17 KER is lying on Plaintiff's, age around ten times, which from the date I was injured on
 18 May 15, 2018, that date, my age was 63, please see Hoag Hospital Medical Record.

19 After Plaintiff corrected server times KER should change from 66 to the year was 63.

20 I thought it was KER maybe made mistake in beginning, but after I correction over and
 21 over, from OCSC to Federal Court, KER remaining no change, then, I realized KER
 22 has been lying purposely discrimination on my age and repeat to make fault statement.

23 It is very hard for me to understand: "Why KER cannot stop lying, as a legal
 24 professional, keeping outright lies under the Court for the United States?" Why? Why?

25
 26 **4: KER filed False Statement to Federal Court: FOUR: see docket #33, P. 8: 2 – 3**

27 KER descript: *"As her feet hit the sand, the momentum caused her to fall forward into*
 28

1 applies and Punitive fine is the must!

2 **It is truly horrible and totally faceless shameful. SHAM ON YOU!**

3 Absolutely, the Court for United States, cannot allowing KER as legal professional
4 using diligent defending,” to cover up his evil motive to engaged in someone from the
5 City (demand name and position) conspiracy, twice hold onto Plaintiff’s Opposition
6 summary judgement documents, violation in due process of law, to corrupt OCSC legal
7 system, to deprived Plaintiff’s Civil Right for fair trial and children’s safety.

8 If allowed only one-party’s opinion, “Why we are People need Courts and Judges?”

9 Because judicate legal dispute must between parties, that is principle of law.

10 Therefore, OCSC granted summary judgement totally baseless, due to no opposition.

11 **6: KER files false Statement to Federal Court – SIX: see docket 31, SAC exhibit**

12 **1**On October 17, 2023, KER emailed: “*No Court has ever ruled in your favor – not*
13 *even once, on any matter, at any time – and there are legal consequences for those that*
14 *bring false and frivolous lawsuits. The consequences are you must pay the City for the*
15 *costs it incurred defeating your unsupported and meritless lawsuit(s).*”

16 “Why KER very much like using words: ever, anytime, any matter, not even once, on
17 any time and any matter?” Because he has been using such maximum words,
18 repeatedly, from new lies to cover up old lies, just cannot stop. Absolutely,
19 misrepresent to the Federal Court. In OCSC Assigned Judge Salter disallowed charge
20 for KER’s legal fee \$4,750 which was split 50/50 total of \$9,500 between the City and
21 Plaintiff, it was who is favor? Also, denial KER filed twice Sanctions and legal fee, It
22 was who is favor? Yes, I must agree OCSC Granted Summary Judgement was did for
23 your favor, why? Because Defendants engaged in conspiracy to corrupt OCSC filing
24 system, informed Supervisor hold onto Plaintiff’s opposition summary judgement
25 documents. Therefore, no judges can see opposition’s all evidence and documents in
26 support of merit, that was truly violation in due process, deceived judgement between
27
28

1 courts. KER conduct all, which determination defendants are liable and guilty to
 2 deprivation of Plaintiff's Civil Right for fair trial and children's safety. Its time in
 3 Federal Court, all correction to fix root problem and any of corruption in OCSC.

4 **7: KER files false Statement to Federal Court – SEVEN dkt:33, p.14:4 -17 & SCA**

5 Again, KER's evil motive to winning lawsuit is extremely shameful to claim "*because*
 6 *that judgement was entered in the City's favor*" Because: Defendants engaged in
 7 conspiracy and corrupt OCSC legal system, to deprive Plaintiff's civil right for fair
 8 trial. **Therefore, the first sham exception apply. Granted summary judgement is**
 9 **totally baseless, due to no opposition.** Also refer II Page 5. (1) Defendants informed
 10 Supervisor Secours twice hold onto opposition summary judgement documents, did not
 11 show on docket. (2) With Judge George, as temporary only once in five minutes to
 12 granted summary judgement without opposition document, without engaged in Oral
 13 Argument, it was truly to proof the Judge abusive the Power and violation in Equal
 14 Right for due process of law. (3) KER perjures filed in notices of ruling in five
 15 minutes have fully arguments. (4) KER deceived judgement from CCDC timely to
 16 untimely in Appellant Court. **The second sham exception apply, Personal injury**
 17 **with addition Civil Right for fair trial in Federal Court** (5) KER outright lies to
 18 Courts all the time. Even this time in Federal Court, still misrepresents to making eight
 19 false statements. (6) KER Refused response 26(f) joint report under discover plan for
 20 17 questions. (7) This time Plaintiff have 20 questions, Federal Court, and Plaintiff all
 21 expecting KER answers as soon as possible. Otherwise, the motion cannot dismiss until
 22 answer all the questions, for Federal Court knowledge all, thereafter, can help Federal
 23 Court for fair ruling. **The third sham exception apply, due to all undeniable**
 24 **evidence to proof,** Defendants all conduct to corrupt OCSC filing legal system,
 25 engaged in conspiracy to violation in due process. KER evil motive to deprive
 26 Plaintiff's civil right for fair trial, therefore, KER under penalty of perjury, deceived
 27
 28

Judgements, harm tort, extortion, deformation and anonymity, malisons threaten if do not drop the lawsuit, he is file frivolous lawsuit again. All of all, KER conduct all ugly corruptions is in the history.

8: KER files false Statement to Federal Court - EIGHT: docket #33, p14, ln 21-27

Legal argument on KER's Conclusion: See KER is repeatedly making false statements to Federal Court. : *"Plaintiff's lawsuit is without merit and frivolous."*

About the merit, refers to a judgment, decision, or ruling that a court will make based on the law, after hearing all the relevant facts and evidence presented in court."

In this lawsuit, has no any court trial offered opportunity for all the relevant facts and evidence presented, no any of judgement or Opinion common on Merit. Based on law, if have evidence in support, any of courts cannot be ignored.

Granted summary judgement within the Judge George, as temporary only once in five minutes, in beginning, she did not response Plaintiff questions, after she read through tentative ruling (that only city's ruling, she should stop reading ask what is Plaintiff's respond? Before the last sentence to Granted Summary Judgement. KER immediately said: "Thank you your honor" I was emotional after, "That not fair, only for one party ruling" She just ignoring me, went to next case. I hold on phone a half hour, hoping can have chance speak to her, but cut off phone line. It was on 12/3/2020. Next day, KER filed: "Notices of Ruling" under penalty of Perjury on "had fully argument between parties." After four days, Plaintiff filed: "Contest Tentative Ruling" on 12/7/2020, but KER denial it, I have evidence to proof he received, and the document show in Docket. About frivolous, OCSC assigned Judge denialed KER twice filed Sanctions to threaten Plaintiff if do not withdraw vacate Summary Judgement motion before May 5, 2021, he will file frivolous paper. See SAC, docket #31, exhibit 1. And email 10/7/2023.

After two years late, KER tort and threaten again in Federal Court. *"if Plaintiff does not drop the lawsuit pending before Judge Slaughter, you may face additional financial*

1 *consequence for second frivolous lawsuit.*” Twice KER filed frivolous propose, to drop
 2 lawsuit, if not, his evil’s motive to revenge, to derivate Plaintiff civil right for fair trial.
 3 In the Opposition, Plaintiff fight back to obtain Citizen’s immunity for equal civil right
 4 for fair trial and children’ safety which deprived by Defendants corrupt OCSC filing
 5 legal system. Therefore, due process of law under 14th Amendment is totally apply!

6 **IV. List of Federal Questions, Plaintiff and Federal Court demand KER respond**
 7 **with evidence to proof. Otherwise, cannot help Federal Court for fair judgement.**

8 **Question 1):** “What is name and job position from City of Newport Beach with KER
 9 together let Supervisor Stacy hold onto opposition’s summary judgement documents?”

10 **Question 2):** What are names of Appellant Court Judges told you about their thought
 11 the claim was entirely without merit?” Because Plaintiff cannot find the word “MERIT”
 12 from Appellant Court’s Opinion. This Federal question is based on KER’s email on
 13 4/13/2023: “*The appellate Court judges thought your claim was entirely without*
 14 *merit.*” See attached email on SAC docket#33, Exhibit 8.

15 **Question 3):** “Where are evidences to proof meritless in this lawsuit?” “Why I cannot
 16 find from Appellant Court’s opinion? We all demand KER respond and evidence proof.

17 **Question 4):** “What was Plaintiff bring false, without merit and frivolous lawsuits?”
 18 “Do you have any of evidence in support to proof these false, meritless, and frivolous
 19 lawsuits?” KER, its very import, Federal Court, and Plaintiff all demand your respond.
 20

21 **Question 5):** “If meritless, why Defendants so fear of Plaintiff’s opposition Summary
 22 Judgement Document and let Supervisor to hold onto? Both of you are legal
 23 Professional, “Do you have knowledge that was the fraud upon initially?”

24 “Why both of you engage together, to control and corrupt OCSC legal filing system?”
 25

26 **Question 6)** “Why did you deceived on judgement was concluded must timely filed by
 27 assigned judge Salter from OCSC to prejudice untimely to Appellant Court?”

28 **Question 7).** “Why did you file notices of ruling for fully written and oral argument in

1 five minutes in next day after summary judgement courtcall hearing on 12/3/2020?"

2 "Why did you purpose to under penalty of perjury and outright lies too much?"

3 "How can have fully written and oral argument of both parties in five minutes?"

4 "Where these opposition summary judgement documents you let Supervisor hold onto?"

5 **Question 8)** "Why did you maliciously threaten to garnish payment which disallowable
6 deposition cost by CPPP 1033.5 (b)(2)?" "Why did you change to harassing cost?"

7 "Who did you make payable to?" "When and how much did you made payment?" "Was
8 the same amount of deposition cost?" "Is this the harassing cost can verifiable?"

9 **Question 9)** "What kind of evidence to proof Plaintiff is bring in false and frivolous
10 lawsuit?" Federal Court and Plaintiff demand KER provide evidence proof the truth

11 **Question 10)** "Where was evidence to proof meritless?" "Why I cannot find common
12 from judges?" "Why KER cannot stop outright lies, harassing, even in Federal Court?"

13 **Question 11)** "Why both of you to corrupt OCSC filing system, to allow or disallow to
14 control courtroom supervisor to hold onto Plaintiff's opposition summary judgement
15 documents?" If Plaintiff bringing false and frivolous lawsuit, "Why Defendants cannot
16 allow OCSC assigned Judge to continue for court trial?"

17 **Federal Questions are continued on same email, see SAC docket 31, exhibit 1.**

18 **Question 12)** On 10/17/2023, KER's same email: "*Everybody is now aware you are
19 being of dishonest, the City is even receiving anonymous letters warning that you are
20 trying to commit fraud. It is very sad that you have taken this approach and have
21 chosen to abuse the Court System.*" KER, can you give name and evidence to proof

22 aware of Plaintiff being of dishonest? "What's commit fraud Plaintiff try to bring in?"

23 **Question 13)** "What is name of anonymous?" "Why you hiding on this, if it was true?"

24 "Show to the Federal Court and Plaintiff if the City receiving anonymous letter again?"

25 "How many anonymous letters the City receiving?" I only see one from KER's emailed
26 on 2/7/2022. If no answer above which to proof KER is a real scammer
27
28

1 **Question 14).** “What was Plaintiff to do to abuse the Court system?”

2 **Question 15)** “Where is the evidence to proof Plaintiff is trying to commit fraud?”

3 KER’s same email continue: *“I encourage you to stop making false statements to drop*
4 *the lawsuit pending before Judge Slaughter or you may face additional financial*
5 *consequences for the (second) frivolous lawsuit you have filed against the City. ”*

6 **Question 16)** “What kind of false statements Plaintiff is making?” Need evidence to
7 proof false statement, Federal Court and Plaintiff are demanding KER to responding.
8 Otherwise, the motion cannot dismiss due to KER accusations, you must tell the truth.

9 **Question 17).** “Why you KER repeatedly to threaten Plaintiff drop lawsuit pending
10 before Judge Slaughter?” Plaintiff is facing second frivolous lawsuit. Its evidence to
11 proof KER continues tort harassing to deprive Plaintiff ‘s civil right for fair Trial.

12 **Question 18)** “Do you forget Judge Salter denialed the Sanction for you filed frivolous
13 paper if I did not withdrawal the vacate the wrongful summary judgement?”

14 “Why did you do it again in Federal Court for second frivolous lawsuit?”

15 **Question 19)** “How did you manipulated between Judges for signing Granted
16 Summary Judgement?” After assigned Judge refused signed on 1/8/2021, you turned to
17 “Did you Defendants allowed Judge only once in the case in five minutes to do so?”

18 “Why did you have many lies and deceived Judgement from OCSC to Appellant Court?”

19 **Question 20)** “Why did Defendants let OCSC Supervisor Secours to hold onto Plaintiff
20 opposition summary judgement documents?” “Was that easy for Judge George, as
21 temporary, only once in five minutes to granted summary judgement straightway?”

22 “How can have fair judgement without Plaintiff’s opposition documents?”

23
24 “Why KER files Eight false statements to proof misrepresentation to Federal Court?”

25 **The motion is cannot dismiss until have KER’s respond and evidence to proof**
26 **twenty Questions, able help Federal Court judicate legal dispute between parties.**
27
28

V. F.R.C. P Rule 12(b)(6) does not apply.

What is the difference between 12 (B)(6) motion and a summary judgment motion? Motions to dismiss under Rule 12(b)(6) are adjudications on the merits, and therefore should be granted with caution. Summary judgment motions ask the court to examine the record and determine whether any material questions exist for a jury to decide.

As a practical matter, Rule 12(b)(6) motions are rarely successful, if their success usually has more to do with the judge than the law. However, since the Federal Rules attempted to adopt the successes and avoid the failures of code pleading, the purpose of Rule 12(b)(6) seems to conflict with the purpose of modern pleading.

Although the liberal pleading rule generally allows a plaintiff to set forth a claim in a short and plain statement, The problem is when and how the district court has granted a Rule 12(b)(6) motion and the court of appeals has reversed or vacated that grant in a considerable number of cases.' There are conflicting views on the interpretation 12(b)(6) The effect of a Rule 12(b)(6) motion is not clear. For example, it is not clear precisely what effect it has upon the application of res judicata. Second, the standards and operation of Rule 12(b)(6) are not clear as to the determination of whether the motion should be granted or denied. Even the objective of Rule 12(b) (6) is not clear.

The Federal Rules and other statutes adopted various devices which have diminished the functions of Rule 12(b)(6). Behind the policy there is a basic precept that "the primary objective of the law is to obtain a decision on the merits of any claim; and that a case should be tried substantially on the merits rather than technically on pleading.

On other hand, if the court overlooks defective allegations and allows plaintiff an evidentiary hearing, complaint once done, evidentiary hearing cannot be ignored.

See Docket #31, exhibit 9, page 3, from OCSC Assigned Judge Salter post judgement on 6/17/2021. *"Finally, Fan's assertion there is additional evidence out there that City and the court should consider is unfortunately too late to be considered by the court."*

1 Why was too late? Because Defendants engaged in conspiracy, to corrupt OCSC filing
 2 system. Initially, informed courtroom's Supervisor hold onto Plaintiff's opposition
 3 summary judgement documents. Secondly, with Judge, only in five minutes courtcall
 4 hearing, there was no any of oral argument, thirdly, KER under penalty of perjury in
 5 Notices of ruling. fourthly, asked assigned judge sign proposed order to grant summary
 6 judgement, after refused sign by assigned judge, KER turned around to the Judge, as
 7 temporary, only in five minutes, she signed 3/3/2021, no notify to Appeal.

8 After three months, the motion finally to be heard by assigned Judge on 6/17/2021, it
 9 was why too late back to Court trial was Scheduled on 3/29/2021.

10 **Defendants conducted all violation in due process of law, only for one propose that**
 11 **is to deprived plaintiff's civil right to disallow Plaintiff have fair trial and**
 12 **children's safety that for prevent anyone injury again.**

13
 14 **VI. Premise Liability of Public Entities Apply! In one-half year statues imitation**

15 On June 17, 2021, Superior Court of Orange County assigned Judge Salter post
 16 judgement: *"the court concludes it must allow the motion to proceed as timely filed."*

17 *"For her remedy, if still timely, is now to file a notice of appeal."*

18 On 6/23/2021, after six days, Plaintiff filed: "notice of appeal" in Appellant Court.

19 On 12/2/2022, Plaintiff filed with New Evidence to Federal Court in one-half years.

20 All property owners, including the government, have a responsibility to maintain
 21 reasonably safe premises. Liability of Public Entities 835 apply within one-half years.

22 **See California Government Code Section: Liability of Public Entities 835: Apply**

23 *"Except as provided by statute, a public entity is liable for injury caused by dangerous*
 24 *condition of its property if the plaintiff establishes that the property was in a dangerous*
 25 *condition at the time of the injury, that the injury was proximately caused by the*
 26 *dangerous condition, that the dangerous condition created a reasonably foreseeable*
 27 *risk of kind of injury which was incurred, and that either:"*
 28

1 **See California GC Section: Notice of dangerous condition 835.2 Apply:**

2 *“ A public entity had actual notice of a dangerous condition within the meaning of*
 3 *subdivision (b) of Section 835 if it had actual knowledge of the existence of the*
 4 *condition and knew or should have known of its dangerous character.*

5 The City had actual knowledge of the existence dangerous character, but failure provide
 6 warning sign, as same hide WET in under and turn to dangerous condition., cannot
 7 keep visitors and children’s safe. See declaration of Mike Halphide who is chief of
 8 lifeguard operation for 36 years. See docket 31, exhibit 3. Page 3-4 SAND section 19: “
 9 *As a result of naturally occurring tides, the sand on the bayside beaches will frequently*
 10 *be submerged during high tides. As a result of this naturally occurring phenomenon,*
 11 *the sand surrounding the Tower is also frequently submerged during high tides.”*

12 Mr. Mike Halphide twice descript high tides is “Frequently” that means foreseeable and
 13 predictable dangerous condition in this public entity is liable for Plaintiff slip/fall
 14 pothole injury caused dangerous condition created on four foreseeable on hazard
 15 condition, but still leave to public intentionally, include children who play there at risks.
 16 If the government entities fell short of these responsibilities when maintaining a public
 17 park, sidewalk, street, building or another area to protect others from dangerous
 18 condition that can cause injury or damage. If fails to maintain or warn of a known
 19 danger and someone sustains injuries, be held responsible for keeping free of hazardous
 20 conditions by performing routine inspection, a related visitor injury for the victim’s
 21 economic and non-economic damages. City of Newport Beach Inspector, declaration of
 22 Eric Foley: *“has never observed children playing on the lifeguard Tower. I have never*
 23 *been asked if the Tower was part of the playground and have never been told that*
 24 *children have been playing on the Tower.* “See docket 31 exhibit 4.

26 Plaintiff respect Federal Court in support together make sure children jump down at
 27 lifeguard stand if at the save place and order the city provide good due care same as
 28

1 Oceanfront, and order the city within warning of WET in underground is the MUST!
 2 Because this lawsuit not heard in state Courts (1) OCSC granted summary judgement
 3 was baseless due to Defendants engaged in conspiracy with Supervisor and Judge
 4 corrupt OCSC legal filing system, deprived twice for Plaintiff civil right for fair trial.
 5 (2) Appellant court Judges cannot review opposition Summary Judgement Documents.
 6 that was disallowed by Defendants allowed Supervisor twice hold onto.
 7 There are specific rules governing which cases are heard where. For example, personal
 8 injury cases typically fall under state law and are normally heard in state court.
 9 Opposite, for this case, it was not heard due to Defendants corrupt OCSC legal system.
 10 Federal court can hear state-law in personal injury case certain conditions as well.
 11 Plaintiff is well qualified and determine pursuant a premise liability of public entities.

12 VII. CONCLUSION

13
 14 Plaintiff provide all undeniable evident and legal arguments in support truth to establish
 15 this lawsuit within strong Merit foundation. Due obligation of Citizen's duty to prevent
 16 anyone injury again, but the city still hiding the danger in children's park.

17 KER filed twice frivolous, first time, threaten Plaintiff if not withdrawal before May 5,
 18 2021, he files sanctions twice. Fortunately, denialed by assigned Judge Salter of OCSC.

19 Again, KER malicious threatens if do not drop the lawsuit before Judge Slaughter, he
 20 files second frivolous with huge finance consequence. KER's evil motive because he
 21 files frivolous lawsuits, to proof KER is continue violation in due process of law to
 22 deprive Plaintiff 's Civil Right for fair trial and Premise Liability of Public Entitles for
 23 children's safety which to prevent that no one injury again at the subject.

24
 25 **Premise Liability of Public Entities, Government Code Section 835 Apply!**

26 **Notice of dangerous condition GC 835.2 Apply!**

27 Government entities are not shielded from **Dangerous Condition of Public Property.**
 28 Federal court can hear state-law in personal injury case certain conditions as well.

1 Because Defendants conducted corruption in OCSC legal filing system, which was
2 against constitution and destroyed Noerr-Penington doctrine protection.

3 All evidence to proof proceeds in OCSC, **for Grand Summary Judgement is totally**
4 **baseless, because without opposition.** Appellant Court cannot review this case, due to
5 no Summary Judgement Record. KER's evil motive also, cannot shield his shameful
6 sham exception apply.

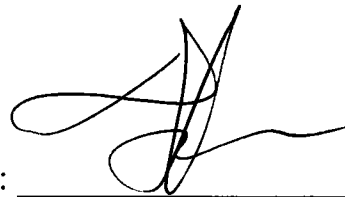
7 The judiciary is independent of the authorities, let us allow the due process of the
8 legal investigation to take its course.

9 Federal Court and victim all demand KER response Plaintiff twenty request questions.
10 Plaintiff hope the day on May 28, 2024, stand up with implicates the protected by the
11 **petition the government, with processual in due process clause of Fourteenth**
12 **Amendment Apply.** Respect is states that no shall any State deprive any person of life,
13 liberty, or property without fair procedures in due process of law; nor deny to any person
14 within jurisdiction equal protection of laws.

15 I declare under the penalty of perjury under the laws of the united State that
16 foregoing is true and correct.
17

18 **Respectfully and Truthfully Submitted**

19 **YAXIAN FAN**

20 

21 BY: _____

22 DATED: January 4, 2024

23 Plaintiff in Self - Represent
24
25
26
27
28

Yaxian Fan
Email: fay731@yahoo.com
Address: 248 Overbrook,
Irvine, CA 92620
Phone: 310 486-5282
Plaintiff in Self-Represent

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

Plaintiff, Yaxian, Fan, vs.

Defendants: City of Newport Beach and

MR. Keith E. Rodenhuis, as Second Defendant,

PROOF OF SERVICE BY EMAILS. Case Number: 8:22-CV-02178-FWS-(DFMx)

I, Plaintiff declare send emails as follows:

Keith E Rodenhuis Keith@kerlegalgroup.com

Amber McCall amber@kerlegalgroup.com

Amanda Ellis amenda@kerlegalgroup.com

Rodger Greiner rodger@kerlegalgroup.com

fanvcnb@projects.filevine.com

which is in where the emailing described in their office in Irvine of Orange County.

I served the document: on January 4, 2024

**PLAINTIFF IN OPPOSITION TO MOTION TO DISMISS SCA. OURSUANT
CITIZEN'S IMMUNITY. FOR CIVIL RIGHT FOR FAIR TRIAL AND
CHILDREN SAFETY, WITH DUE PROCESS UNDER 14TH AMENDMENT.**

on all interested parties in this action by list above emails.

I declare under penalty of perjury that the foregoing is true and correct.



Yaxian Fan, as Plaintiff in Self-Represent

Executed this 3rd day of January 4, 2024